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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 WILLIAM CECIL THORNTON,
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Petitioner,

v.

MATTHEW CATE, et al.,
Respondents.

Civil No. 11-1581 LAB (WMC)

ORDER:

**(1) DISMISSING CASE
WITHOUT PREJUDICE; and**

**(2) DENYING MOTION TO
PROCEED IN FORMA PAUPERIS
AS MOOT**

Petitioner, a state prisoner proceeding pro se, has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, together with a motion to proceed in forma pauperis.

ORDER DISMISSING CASE WITHOUT PREJUDICE

In this Petition, Petitioner is seeking to challenge his state court conviction in San Diego Superior Court case number SCE295036. (*See* ECF No. 1.) Petitioner is already challenging this conviction via a habeas corpus petition filed pursuant to 28 U.S.C. § 2254 in case number 11cv0338 IEG (POR). (*See Thornton v. Stainer*, 11cv0338 IEG (POR).) The claim contained in the Petition filed in this case is not duplicative of the claims contained in the petition filed in case no. 11cv0338 IEG (POR); rather, it is an additional ground upon which he is challenging his conviction in San Diego Superior Court case no. SCE295036. An Answer has been filed in case no. 11cv0338 IEG (POR). (*See id.*, ECF No. 9.) Thus, if Petitioner wishes to challenge his

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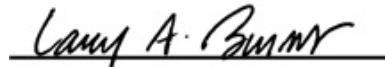
1 conviction in San Diego Superior Court case no. SCE295036 on additional grounds, he must
2 seek leave to amend his petition in case no. 11cv0338 IEG (POR). (*See* Fed.R.Civ.P. 15(a)(2)).

3 **MOTION TO PROCEED IN FORMA PAUPERIS**

4 Petitioner has filed a motion to proceed in forma pauperis. Because the Court is
5 dismissing this action without prejudice, the motion to proceed in forma pauperis is **DENIED**
6 as moot.

7 **IT IS SO ORDERED.**

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9 DATED: August 2, 2011

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11 HONORABLE LARRY ALAN BURNS
12 United States District Judge
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